

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF)	OAH No. 13-1260-CSS
X J. M)	CSSD No. 001155209
_____)	

DECISION AND ORDER

I. Introduction

This case is X J. M’s appeal of an order modifying his child support obligation. The Child Support Services Division (Division) issued this order increasing Mr. M’s ongoing monthly obligation for the support of his child, N, from \$636 to \$1,006 for effective May 1, 2013.

On October 9, 2013, a formal hearing was held to consider Mr. M’s appeal.¹ Mr. M participated in the hearing. The custodial parent, K Z, also participated. Erinn Brian, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

Based on the evidence presented at the hearing, the administrative law judge concludes that Mr. M’s modified ongoing child support order should be affirmed. Modified ongoing child support should be set at \$1,006 per month effective May 1, 2013, based on the Division’s estimate of Mr. M’s current annual income, in accordance with the Division’s order. The evidence at the hearing showed that the annual income amount used in the calculation supporting the Division’s order that increased ongoing child support was correct. Mr. M did not show that the facts that he is not longer living at his worksite and working as many hours or that he was not working at other jobs besides his mine work would probably result in his earning less income than the Division used to calculate his modified ongoing monthly child support for N.

II. Facts

This case is an appeal of the Division’s order increasing Mr. M’s ongoing child support obligation through the modification process.² Mr. M’s child support for his child, N was set in

¹ The hearing was held under Alaska Statute 25.27.190.

² Alaska Civil Rule 90.3(h) governs child support modification actions.

2011 at \$636 per month.³

Ms. Z filed a request for modification in April of 2013.⁴ The Division issued notice of the petition for modification on April 24, 2013.⁵

The Division issued a Modified Administrative Child and Medical Support Order on June 10, 2013.⁶ The Division set Mr. M's modified ongoing child support based on calculations using his estimated annual income based on his reported earnings for the last two quarters of 2012 and the first two quarters of 2013, which result in a monthly support amount of \$1,006 per month for one child.⁷ This amount is more than a 15 percent increase from his current monthly amount of \$636.

Mr. M requested a formal hearing, providing income information and explaining that he was not working at the part-time jobs he had in 2012 in addition to his work at the No Name mine.⁸

At the hearing, Mr. M was also concerned that he would not earn as much in 2013 as he had in 2012 because he had lived near the mine in 2012 and had worked more hours than he does now, living in No Name.⁹

The Division's modification order was based on Mr. M's reported earnings for the last two quarters of 2012 and the first two quarters of 2013.¹⁰ Mr. M's reported earnings for the first two quarters of 2013 indicated that he will earn more in 2013 than he did in 2012 and slightly more than he did in the estimate of his earnings that the Division used to calculate his modified ongoing child support.¹¹ When this was pointed out at the hearing, Mr. M did not dispute that this evidence indicates he earns an annual income at the amount the Division used to calculate his modified child support.¹² When the Division observed that Mr. M might be entitled to a slightly higher deduction for his 2013 retirement contributions, but that the net result of applying

³ Exhibit 1.

⁴ Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ Exhibit 7.

⁸ Mr. M's request for a formal hearing is found at Exhibit 5.

⁹ Recording of Hearing – Testimony of Mr. M.

¹⁰ Exhibit 4, page 8 & Exhibit 6.

¹¹ Exhibit 6.

that deduction to an annual income figure that was estimated on his year-to-date 2013 earnings would result in a net increase in his ongoing monthly child support, Mr. M did not request this adjustment.¹³ Based on the evidence in the record, I find that it is more likely than not the Division's calculation at Exhibit 4, page 8, and the income amounts used in this calculation are correct.¹⁴

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. M, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁵ Mr. M did not meet his burden of proof to show that the ongoing monthly amount in the Division's order was incorrect. The Division calculated Mr. M's child support based on its estimate of his annual income using the last four reported quarters of his earnings with his current employer. This estimate did not include income from part-time jobs with other employers. Mr. M did not dispute that the reported earnings used in the Division's modification calculation were not accurate.

Ongoing child support should be calculated based using the best estimate of Mr. M's income unless there is a showing by clear and convincing evidence that a variance of the calculated amount based on the child support guidelines is needed to prevent an injustice. The new monthly amount calculated by the Division is correct. There is not clear and convincing evidence in the record showing that an injustice will occur if ongoing child support is set at this amount.¹⁶

Mr. M also has a child support obligation for a younger child of a different relationship. Mr. M lives with his fiancée and her child.¹⁷ As explained at the hearing, neither child support paid for a younger child, nor supporting a step-child in the household would result in a reduction

¹² Recording of Hearing.

¹³ Recording of Hearing.

¹⁴ Recording of Hearing & Exhibits 4 & 6.

¹⁵ Alaska Regulation 15 AAC 05.030(h).

¹⁶ See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

¹⁷ Exhibit 4, page 8 & Exhibit 6.

of the ongoing child support for an older biological child absent unusual circumstance.¹⁸

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.¹⁹ The rule states that a material change of circumstances “will be presumed” if the modified support amount would alter the outstanding support order by 15 percent.²⁰

The evidence in the record shows that a material change of circumstances has occurred since Mr. M’s ongoing child support was set at \$636 per month. The modified ongoing amount calculated at \$1,006 per month for one child is more than a 15 percent change from the outstanding order of \$636 per month. A material change of circumstances justifying an upward modification of ongoing child support has occurred.

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. Following this general rule, the modification should be effective May 1, 2013, because the petition was issued in April of 2013.

IV. Conclusion

Mr. M’s ongoing child support should be modified based on the Division’s calculations. Modified ongoing child support should be set at \$1,006 per month for one child effective May 1, 2013, based on the Division’s estimate of Mr. M’s current income in accordance with the Division’s order. The child support amount in this order was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

The Division’s Modified Administrative Child and Medical Support Order issued June 10, 2013 is affirmed.

DATED this 10th day of October, 2013.

By: Signed
Mark T. Handley
Administrative Law Judge

¹⁸ Alaska Civil Rule 90.3 Commentary VI.B.2.
¹⁹ Alaska Civil Rule 90.3(h)(1).
²⁰ Alaska Civil Rule 90.3, Commentary X.

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 4th day of November, 2013

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication.]